



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

EDDIE LEE GORDON,

Petitioner,

vs.

WARDEN RUTH YANCEY, *et al.*,

Respondents.

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CIVIL ACTION NO. 6:05-2929-HFF-WMC

ORDER

This is a petition for *habeas corpus* filed pursuant to 28 U.S.C. § 2241. Petitioner is proceeding *pro se*.

On November 1, 2005, the Magistrate Judge filed a Report in which he recommended that this petition be dismissed *without prejudice*. Petitioner's objections were due on November 18, 2005. On November 22, 2005, the Court entered an Order adopting the Report and noting that Petitioner had failed to file objections. On November 23, 2005, the Court received Petitioner's objections. Because the Court received Petitioner's objections after it entered an order adopting the Report and dismissing the case, the Court will treat these objections as a motion to alter or amend under Fed. R. Civ. P. 59(e).

Petitioner's objections attack the Magistrate Judge's recommendation that this petition be dismissed, but they fail to offer any convincing arguments against the Magistrate's conclusions. Specifically, Petitioner fails to overcome the Magistrate Judge's conclusion that his claims must be

brought under 28 U.S.C. § 2255 rather than § 2241. Even if the Court accepts Petitioner's assertion that he is not making an *Apprendi*-type claim, Petitioner's claim is nothing more than an attack on the jurisdiction of the trial court to impose a sentence upon conviction. In fact, Petitioner recognizes that his claims amount to a jurisdictional attack. (Objections 4-5.) Yet, as the Magistrate noted, challenges to the court's jurisdiction to impose sentence must be brought under § 2255. (Report 4-5.) Therefore, the Court concludes that this petition for *habeas* relief under § 2241 is not tenable.

Thus, after a thorough review of the record in this petition, the Court finds that, even under the liberal pleading standard afforded to *pro se* litigants, this petition must be dismissed.¹ Accordingly, the Court **OVERRULES** Petitioner's objections and declines to alter or amend its Order of November 22, 2005.

IT IS SO ORDERED.

Signed this 28th day of November, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this Order within **sixty (60)** days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

¹ The Court reviews the Magistrate Judge's Report de novo. *See* Order of November 22, 2005.